

Operating Plan

1. PARTIES

The **Montana Department of Corrections (DOC)** and the **Montana Department of Natural Resources and Conservation (DNRC)** enter into this Operating Plan to establish and define the specifics of the organization, training and use of the Deer Lodge Crew. The parties name, address, and telephone number are as follows:

Montana Department of Corrections
Montana State Prison and
Montana Correctional Enterprises (MSP/MCE)
350 Conley Lake Rd.
Deer Lodge, MT 59722
(406) 846-1320 x 2373 or x 2250

Montana Department of Natural Resources
and Conservation
1401 27th Avenue
Missoula, MT 59804
(406) 542-4200

DOC AND DNRC, AS PARTIES TO THIS OPERATING PLAN AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. DUTIES/RESPONSIBILITIES OF THE PARTIES

A. DOC agrees to provide:

1. Fifteen inmates for use on the Deer Lodge Crew, and at least ten inmates as back up, from MSP/MCE to fight fires in the state of Montana for a period not to exceed fourteen (14) days per dispatch (excluding travel). Only one crew, consisting of a maximum of 15 inmates, will be dispatched at any given time. The dispatch may entail assignments to different locations, subject to the prior approval of the MSP/MCE Coordinator or, in his absence, the Shift Commander.
2. Three MSP/MCE staff members (herein, "security staff") to supervise the inmates and provide 24-hour security while on a fire assignment. The security staff shall receive training in fire safety and suppression, and will perform as squad bosses for suppression activities as well as performing their security function. A roster of approximately nine trained security staff is needed to assure that three are available at any given time. Security staff will also be responsible for operating two of the three vehicles normally used to transport the crew to a fire.
3. A Deer Lodge Crew coordinator, (herein, "MSP/MCE Coordinator"). The MSP/MCE Coordinator or designee shall:
 - a. Screen inmates for acceptability on the inmate crew in accordance with Department of Corrections Policy 5.1.3 – Adult Offender Participation in a Community Work Program. Screening shall include a physical assessment and medical clearance. Inmates convicted of arson, kidnapping, or a sexual offense will not be placed on the Deer Lodge Crew. Have at least 25 inmates accepted through the screening process and available for training by April 15th each year.
 - b. Coordinate training efforts with DNRC to ensure successful completion of all required DNRC training;

- c. Ensure preparedness of the Deer Lodge Crew for dispatch, upon request, with a goal of being dispatched within 2 hours of a request;
 - d. Maintain a roster of eligible inmates and staff and request/arrange additional training from DNRC, as needed;
 - e. Prior to dispatch or repositioning of the fire crew, notify county law enforcement in the county where the crew will be located
 - f. Be responsible for personal gear bag inventory at MSP/MCE.
- 4. General and routine maintenance (i.e., chassis lubrication, oil changes, tire alignment and rotation, etc.) at its cost and expense, of the fire vehicles provided by DNRC.
 - 5. Maintenance and repairs required for the vehicle loaned to DOC for use by the Deer Lodge Crew for project work. See also Section B. 6.
 - 6. To perform further as set forth in this Operating Plan.

B. DNRC agrees to provide:

- 1. Fire suppression and safety training to the inmates and security staff prior to any request for dispatch. The training will be held at least annually, prior to May 1, and will require a minimum of three days to complete. DNRC will conduct all training at MSP/MCE. Completion of the required training and task books will qualify an individual inmate as a Firefighter and security staff as Advanced Firefighter (Squad Boss) under the guidelines of the National Wildfire Coordination Group (NWCG). Further, DNRC shall determine the necessity of conducting additional training sessions, requested by MSP/MCE, based on projected fire suppression needs.
- 2. An appropriately trained and qualified Crew Boss to supervise all fire suppression activities of the Deer Lodge Crew. The Crew Boss shall travel with the crew from the time of dispatch until the crew is returned to MSP. The Crew Boss shall act as the official spokesperson for the Deer Lodge Crew while on a fire assignment and will assist the security staff to ensure the security of inmates and maintenance of public safety.
- 3. All personal protective equipment (hardhats, nomex clothing, gloves, goggles, etc.) and fire suppression tools (shovels, pulaskis, etc.) necessary to properly equip the inmate crew and security staff for fire suppression duties. (Work boots will be the responsibility of each crewmember. A leather boot with a lug sole and 8 inch top is required for fire suppression work.)
 - a. DNRC will provide the Deer Lodge Crew with uniquely colored hardhats that will specifically identify them as member of the MSP/MCE fire crew. The inmate crewmembers will wear MSP/MCE issued clothing while in camp.
- 4. Personal gear bags for all inmate crewmembers. These bags will be maintained and supplied by MSP/MCE with a fourteen-day supply of the necessary personal items and clothing. Personal gear bags will be stored in a designated secure storage area at MSP/MCE with the MSP/MCE Coordinator being responsible for inventory.

5. Vehicles and one driver (Crew Boss) for transportation of the Deer Lodge Crew to and from the assigned fire location. Drivers must possess a valid drivers license necessary for the type of vehicle operated and the number of persons in the vehicle. All costs for transportation of the Deer Lodge Crew will be borne by DNRC.
6. A vehicle on loan to MSP/MCE for use by the Deer Lodge Crew when working on non-fire suppression projects. This vehicle will normally be stationed at MSP/MCE but DNRC may move it to another location for its use with prior notification. It may be used for Deer Lodge Crew project work on MSP/MCE property or for other project work requested or authorized by DNRC. Incidental use to support MSP/MCE project work, such as traveling to Deer Lodge for supplies, is allowed. Operating costs will be paid by MSP/MCE for MSP/MCE projects or by DNRC for DNRC projects or fire use. Only Deer Lodge Crew security staff or DNRC employees may operate the vehicle. MSP/MCE is responsible for all maintenance and repairs, except repairs needed as a result of use on fires or DNRC projects would be the responsibility of DNRC. A regular preventive maintenance schedule shall be followed by MSP/MCE. Any alterations or modifications to the vehicle must be first approved by DNRC.
7. All meals for the Deer Lodge Crew while on a fire assignment.
8. To perform further as set forth in this Operating Plan.

C. The Parties further agree to the following:

1. Security

- a. The security staff will make all security decisions concerning the Deer Lodge Crew and that whether a decision impacts security rests in the sole discretion of the security staff. The security staff reserves the right to order the return of the Deer Lodge Crew to the prison at any time. Serious disciplinary infractions or security issues will result in the immediate termination of the fire assignment and the immediate return of the inmates to the institution.
- b. Security staff will provide supervision of the inmates at all times.
- c. DNRC will provide adequate segregation of the Deer Lodge Crew and their belongings from all other firefighters on the fire line and in fire camp. Whether segregation is adequate or necessary, in any context, rests in the sole discretion of the security staff.
- d. Contact between inmates and members of the public, including other fire crews or staff members, within reason, is prohibited at the discretion of the security staff. This includes travel to and from the fire location and while at the fire location and in camp.
- e. The Deer Lodge Crew shall be kept together in close, physical proximity at all times. It is allowable, however, to divide the crew to work two separate fires if the entire crew reunites at one location for after shift rest periods.
- f. The Crew Boss will distribute personal protective equipment and fire suppression tools. All tools and equipment given to inmates will be accounted for at the beginning and end of each day. In addition, the Crew Boss and security staff will account for all personal

protective equipment and fire suppression tools upon return to the institution and prior to the inmates release back into the institution.

2. Training/Physical/Screening Requirements

- a. MSP/MCE will appropriately screen inmates and MSP/MCE staff prior to consideration for membership on the Deer Lodge Crew.
- b. As a prerequisite to receiving fire suppression and safety training, all inmates and staff members must undergo a physical examination and receive medical clearance prior to engagement in any physical testing or training.
- c. After receipt of proper medical authorization, each inmate and staff member must successfully complete NWCG training and the DNRC Pack Test to become eligible for the Deer Lodge Crew.
- d. All DNRC personnel assigned as a Crew Boss shall receive appropriate training by MSP/MCE relative to working with inmates. Training will take approximately four hours to complete and must be received prior to assignment with the Deer Lodge Crew.

3. Fire Dispatch and Notification Procedures

- a. All requests to dispatch the Deer Lodge Crew shall initiate from the Missoula Interagency Dispatch Center (MDC) to the Anaconda Unit, DNRC, Fire Duty Officer and include the county in which the crew will be working.. The Fire Duty Officer will in turn contact the Shift Commander at MSP/MCE. The Shift Commander will then notify the MSP/MCE Coordinator. If the Coordinator cannot be reached, the Shift Commander will prepare the fire crew for dispatch and contact the designated security staff.
- b. Personnel from the Anaconda Unit, DNRC will notify the MSP/MCE Coordinator or Shift Commander of the approximate pick-up time of the fire crew, subject to modification by either party.
- c. If the DNRC Crew Boss determines that an inmate or security staff member is not performing their duties adequately or not acting appropriately, the individual will be released from the fire and transported back to MSP at DOC's expense.

3. COMPENSATION/BILLING

DNRC shall compensate DOC for the services of the Deer Lodge Crew provided pursuant to Section 2. Compensation will be paid in the following manner:

- A. DNRC shall pay DOC \$5.25/hour for all hours worked by each inmate (there is no overtime rate) and \$32.00/hour for all overtime hours (hours worked in excess of 40/week) earned by MSP/MCE Correctional Officers while on a fire assignment. In addition, DNRC shall pay DOC an additional \$0.50/hour for all hours worked (both regular and overtime) by the designated fireline officers and an additional \$1.00/hour for all hours worked (both regular and overtime) by the designated fire camp officer. DNRC shall also pay fire crew members for travel time to and from the assignment location. DOC will be responsible for payment of regular time (work hours up to 40 hours/week) wages of MSP/MCE Correctional Officers.

- B. DNRC agrees to pay DOC within 30 business days after dispatch to a fire assignment.

4. **TIME OF PERFORMANCE**

This Operating Plan shall take effect upon receipt of the final signature and remain in effect until revised at any time by mutual consent of both parties or terminated with 30 days written notice from either party to the other.

5. **LIAISON AND NOTICE**

- A. Gayle Lambert, MCE Administrator (846-1320 ext. 2373) or successor serves as DOC liaison. The MSP/MCE Shift Commander can be reached at 846-1320 ext. 2250.
- B. Terry Vaughn (563-6078) or successor serves as DNRC liaison.
- C. All notices and invoices required in this Operating Plan shall be in writing, properly addressed to the liaison in A. and B. above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

6. **HOLD HARMLESS AND INDEMNIFICATION**

- A. The parties agree that they are financially responsible (liable) for any audit exception or other financial loss due to the negligence, intentional acts, or failure for any reason to comply with the terms of this Operating Plan.
- B. The parties agree that, to the extent of their liability pursuant to the Montana Tort Claims Act, Mont. Code Ann. §§ 2-9-101 through 2-9-318, they will protect, defend, and save each party, its elected and appointed officials, agents and employees, while acting with the scope of their duties as such, harmless from and against all claims, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of their employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of either party and/or its agents, employees, subcontractors, or representatives. Nothing herein shall be construed as an agreement by the parties to release, indemnify and hold harmless the parties, their officials, agents, or employees from liability for damage or injury to persons or property caused by the negligence, carelessness, or intentional acts of their officials, agents, or employees, unless said officials, agents, or employees are acting under the direction or control of a respective party.

7. **ACCESS AND RETENTION OF RECORDS**

- A. The parties are required to maintain reasonable records of performance of duties pursuant to this Operating Plan.
- B. The parties agree to provide the other party, the Legislative Auditor, or their authorized agent with access to records concerning this Operating Plan.

- C. The parties agree to create and retain all records supporting the services rendered for a period of three years or as consistent with the parties' General Records Retention Schedule responsibilities after completion of this Operating Plan or the conclusion of any claim, litigation, or exception relating to this Operating Plan taken by the State of Montana or a third party.

8. PUBLIC INFORMATION

The parties recognize that this Operating Plan may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. The parties have a limited ability to assert a privacy interest in the subject matter of the Operating Plan particularly with respect to information, which is in the nature of a "trade secret" as the phrase is defined in state or federal law. The parties agree that, to the extent of their liability pursuant to the Montana Tort Claims Act, Mont. Code Ann. §§ 2-9-101 through 2-9-318, they will hold each other harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

9. AMENDMENTS

All amendments to this Operating Plan shall be in writing and signed by the parties.

10. COMPLIANCE WITH LAWS

The parties must comply with all applicable federal and state law including, but not limited to the prevailing wage laws, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, the Section 504 of the Rehabilitation Act of 1973.

11. TERMINATION

This Operating Plan may be terminated with 30 days written notice from either party to the other.

12. CHOICE OF LAW AND VENUE

This Operating Plan is governed by the laws of Montana. The parties agree that any mediation, arbitration or litigation concerning this Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana.

13. FREEDOM FROM DISCRIMINATION

All parties of this Operating Plan agree that all hiring must be done on the basis of merit and qualifications. There may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person or persons performing the Operating Plan.

14. LICENSURE

Each party agrees to be financially responsible for licenses, permits, and certifications necessary to operate under this Operating Plan.

15. INTEGRATION

This Operating Plan shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the agreement.

16. SEVERABILITY

If any single part, or parts, of this Operating Plan are determined void, the remaining parts remain valid and operative.

17. NON-WAIVER

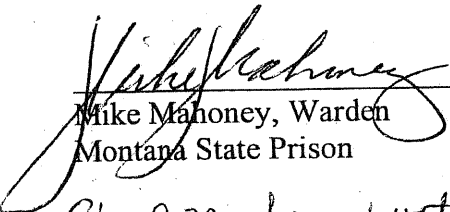
The waiver of failure to enforce any provision of this Operating Plan shall not operate as a waiver of any future breach of any such provision or any other provision.

IN WITNESS THEREOF, the parties have entered into and executed this Operating Plan:

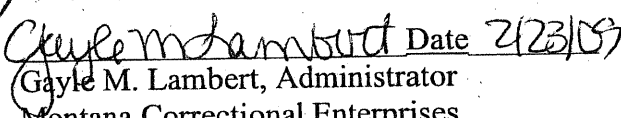
SIGNATURES

DOC


DNRC


Mike Mahoney, Warden
Montana State Prison

Date 2/18/09


Gayle M. Lambert, Administrator
Montana Correctional Enterprises

Date 2/23/09


Tony Liane, Area Manager
Southwestern Land Office

Date 2/6/09